

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

NICHOLAS OUDEKERK,

Plaintiff,

5:23-cv-288 (BKS/TWD)

v.

GLENS FALLS PD OFFICER
DOE #1, GLENS FALLS PD
OFFICER DOE #2, and WARREN
PROSECUTOR DOE,

Defendants.

Appearances:

Plaintiff pro se:

Nicholas Oudekerk

21-A-1295

Auburn Correctional Facility

P.O. Box 618

Auburn, NY 13021

Hon. Brenda K. Sannes, Chief United States District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff pro se Nicholas Oudekerk commenced this proceeding under 42 U.S.C. § 1983. (Dkt. No. 1). This matter was referred to United States Magistrate Judge Thérèse Wiley Dancks who, on May 5, 2023, granted Plaintiff's motion to proceed in forma pauperis, (Dkt. No. 2), denied without prejudice and with leave to renew Plaintiff's motion for appointment of counsel, (Dkt. No. 5), and issued a Report-Recommendation recommending that: (1) Plaintiff's claims against Warren Prosecutor Doe be dismissed with prejudice and that Warren Prosecutor Doe be terminated as a defendant based on "absolute prosecutorial immunity" and Eleventh Amendment immunity; (2) Plaintiff's Fourth Amendment false arrest/false imprisonment and malicious

prosecution claims against Glens Falls Police Officers Doe 1 and Doe 2, in their individual capacities, survive initial review and require a response; (3) Plaintiff's Fourth Amendment false arrest/false imprisonment and malicious prosecution claims against Glens Falls Police Officers Doe 1 and Doe 2, in their official capacities, be dismissed on the ground that the complaint fails to allege "facts suggesting the existence of a municipal policy, custom or practice"; and (4) the Clerk add the City of Glens Falls Chief of Police, Jarred M. Smith, as a defendant for purposes of service and discovery only. (Dkt. No. 10, at 8–11, 14–15). Magistrate Judge Dancks advised Plaintiff that "[p]ursuant to 28 U.S.C. § 636(b)(1), the parties have fourteen days within which to file written objections to the foregoing report" and that "failure to object . . . within fourteen days will preclude appellate review." (Dkt. No. 10, at 16) (emphasis omitted). Plaintiff did not file an objection to the Report-Recommendation.

As no objection to the Report-Recommendation has been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment. Having reviewed the Report-Recommendation for clear error and found none, the Court adopts the Report-Recommendation in its entirety.

For these reasons, it is hereby

ORDERED that Magistrate Judge Dancks's Report-Recommendation (Dkt. No. 10) is **ADOPTED**; and it is further

ORDERED Plaintiff's Complaint (Dkt. No. 1) be **ACCEPTED** for filing to the extent that Plaintiff's Fourth Amendment false arrest/false imprisonment and malicious prosecution claims against Glens Falls Police Officers Doe 1 and Doe 2, in their individual capacities, survive initial review and require a response; and it is further

ORDERED that Plaintiff's claims against Warren Prosecutor Doe be **DISMISSED WITH PREJUDICE** and that Warren Prosecutor Doe be **TERMINATED** as a Defendant; and it is further

ORDERED that Plaintiff's Fourth Amendment false arrest/false imprisonment and malicious prosecution claims against Glens Falls Police Officers Doe 1 and Doe 2, in their official capacities, be **DISMISSED**; and it is further

ORDERED that the Clerk **ADD** the City of Glens Falls Chief of Police, Jarred M. Smith, as a defendant **FOR PURPOSES OF SERVICE AND DISCOVERY ONLY**; and it is further

ORDERED that the Clerk issue a summons and forward it, along with a copy of the complaint to the United States Marshal for service upon City of Glens Falls Chief of Police, Jarred M. Smith; and it is further


ORDERED that the Clerk provide the superintendent of the facility designated by Plaintiff as his current location with a copy of Plaintiff's Inmate Authorization (Dkt. No. 3), and notify the official that this action has been filed and that Plaintiff is required to pay to the Northern District of New York the statutory filing fee of \$350, over time, pursuant to 28 U.S.C. § 1915; and it is further

ORDERED that the Clerk provide a copy of Plaintiff's Inmate Authorization (Dkt. No. 3) to the Financial Deputy of the Clerk's Office; and it is further

ORDERED that the Clerk serve a copy of this Order on Plaintiff in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: May 26, 2023
Syracuse, New York


Brenda K. Sannes
Chief U.S. District Judge